

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ONEIDA COUNTY

Case II  
No. 12929 ME-461  
Decision No. 9134-D

Mr. Lawrence Heath, Corporation Counsel, Oneida County, Oneida County Courthouse, P.O. Box 400, Rhinelander, WI 54501, appearing on behalf of the County.

Mr. Daniel J. Barrington, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 4115 Briarwood Avenue, Wausau, WI 54401, appearing on behalf of the Union.

Oneida County Employees (Courthouse) Local 79, AFSCME, AFL-CIO, having filed a petition on November 15, 1982 requesting the Wisconsin Employment Relations Commission to clarify an existing collective bargaining unit consisting of all regular full-time and part-time employees of the Oneida County Courthouse, but excluding all elected, supervisory, confidential, and managerial personnel, by determining whether the position of Maintenance/Custodian should be included in said unit 1/; and Oneida County, having filed a petition on November 22, 1982 requesting the Commission to clarify said existing collective bargaining unit, and determining whether the position of Deputy County Clerk should be excluded from said unit; and hearing in the matters having been conducted on March 2, 1983 at Rhinelander, Wisconsin, before Andrew Roberts, an Examiner on the staff of the Commission; and post-hearing briefs having been received by May 19, 1983; and the Commission having considered all of the evidence and arguments of the parties, and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusions of Law and Order Clarifying Bargaining Unit.

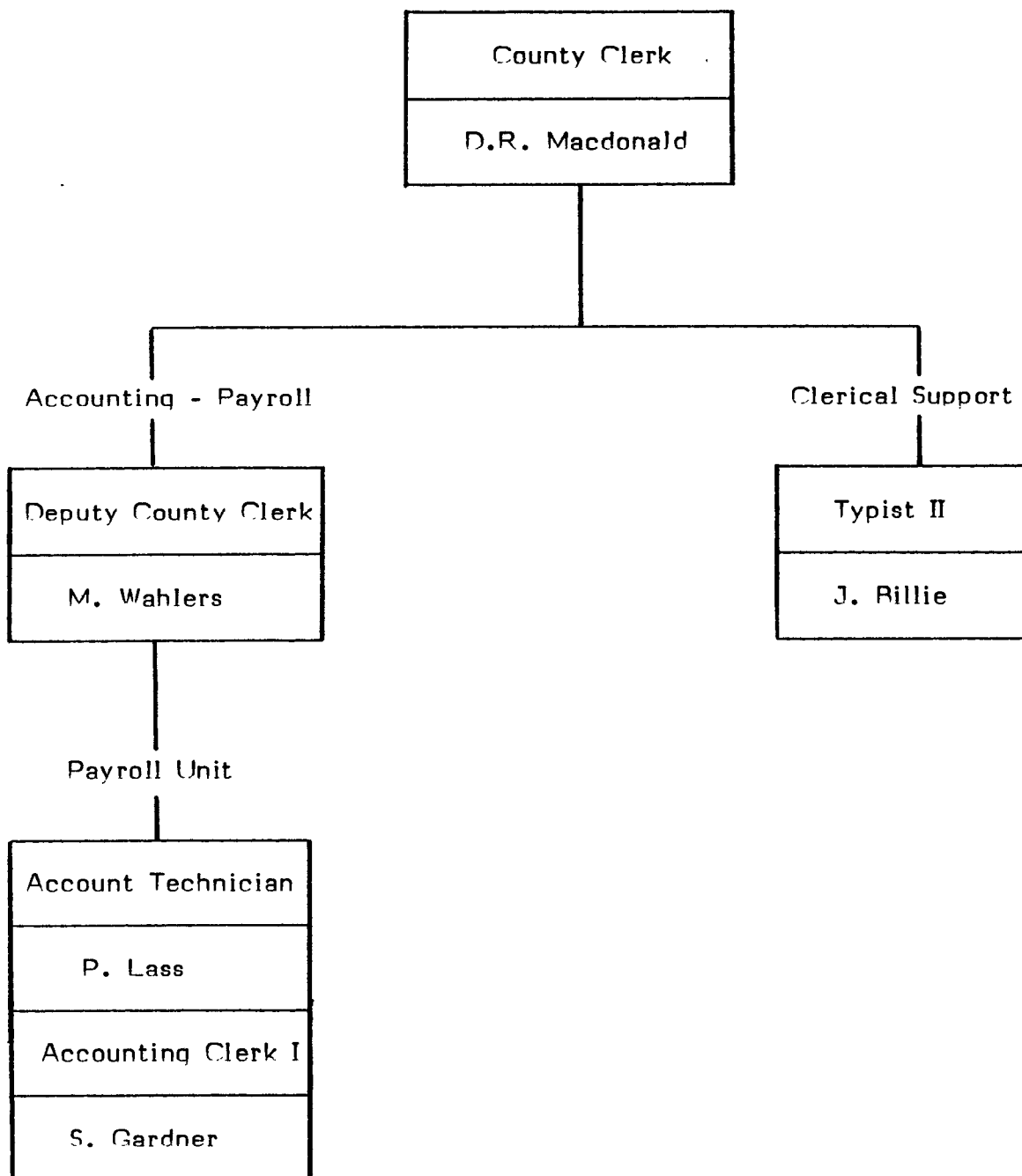
3. That the County and the Union are currently parties to a collective bargaining agreement which covers all regular full-time and regular part-time employees of the Oneida County Courthouse, but excluding all elected, supervisory, confidential, and managerial personnel; and that the bargaining unit description does not exclude professional employees.

No. 9134-D

4. That the County has a total of one hundred sixty-six permanent employees, including both represented and non-represented employees; that in addition to the Courthouse bargaining unit, there are two other bargaining units of employees in the County, consisting of the Highway Department employees and the Sheriff's Department employees; and that the following four positions are excluded from the bargaining unit as confidential positions: one Personnel Department secretary, one Corporation Counsel's secretary and two secretaries in the District Attorney's office.

5. That prior to the summer of 1982, the County used a cash bookkeeping system to keep its accounts and budget; that during the summer of 1982 the County began to develop a new computerized accounting system which was implemented on January 1, 1983; that the new accounting system uses generally accepted accounting principles, hereinafter GAAP; and that GAAP is a method of accounting which facilitates comparisons between various organizations, both in the public and private sectors.

6. That the County Clerk's Office has five employees, consisting of a County Clerk, a Deputy County Clerk, an Account Technician, an Accounting Clerk I, and a Typist II; that the County Clerk's Office "organization" is charted as follows with the designated individuals holding the respective positions:



that the position of County Clerk, held by D.R. Macdonald since January, 1981, directs the entire office and reports to the Oneida County Board; that the position of Deputy County Clerk, held by Maryanne Wahlers since September, 1982, is supervised by the County Clerk; that the Deputy County Clerk regularly directs the activities of the Account Technician and the Accounting Clerk I and occasionally directs the activities of the Typist II.

7. That in 1982 the County decided to change the duties of the Deputy County Clerk; that as a result of that decision the personnel director for the County did a study of the County Clerk's Office and of the Deputy County Clerk position; that in August, 1982 the following job description was formulated based on that study:

DISTINGUISHING FEATURES OF THE CLASS: The Deputy County Clerk assists with the performance of duties in the County Clerk's Office, principally supervising the account-keeping functions. Office procedures are governed by Wisconsin Statutes and are executed accordingly. The Deputy County Clerk is expected to perform all the functions of the clerk in his/her absence. Directed supervision is available from the County Clerk, but the employee is called upon to exercise independent judgement and initiative.

EXAMPLES OF WORK: (Illustrative only)

Supervises the payroll unit in all facets of the county payroll program;

Maintains the accounting system of the county, including posting, balancing and reconciliation of all general ledger accounts;

Prepares monthly trial balance;

Assists with the preparation of the annual budget, types all budget sheets, transferring figures from ledger;

Works at the counter and assists the public in preparing forms and applications;

Sells hunting and fishing licenses to dealers and individuals as well as issuing permits;

Prepares a variety of monthly, quarterly and annual state and federal reports;

Assists with election preparations and records election results;

Maintains an inventory and orders office supplies;

Does related work as required.

QUALIFICATIONS:

--Knowledge of the application of accounting principles;

--Knowledge of governmental accounting methods;

--Knowledge of laws, rules and regulations pertaining to accounting;

--Ability to maintain effective working relationships with other employees, officials, and the public;

--Ability to use sound and independent judgment;

--Ability to keep a variety of complex records;

--Skill in applying accounting principles to the keeping of accounts and the preparation of financial statements.

TRAINING AND EXPERIENCE:

Completion of two (2) years college with a major in accounting and two (2) years work experience in the accounting field with preferably one year at a supervisory level; or any combination of training and experience which provides the required knowledge, skills and abilities.

that Wahlers holds a bachelor's degree in accounting; that the above-quoted job description was developed, and Wahlers filled the position, before the County Board had approved the new accounting system; that as a result of the County Board's approval of the new accounting system, the Deputy County Clerk position now requires an individual with a four year college degree in accounting; and that any future Deputy County Clerk will be expected to hold such a degree.

8. That, among other duties, Wahlers is responsible for the payroll function of the County, the maintenance of all of the County's accounting records, the compilation of materials for the County Board to use in preparing the County's annual budget, and developing and directing other departments of the County in the implementation and administration of the new accounting system; that Wahlers prepares the proposed annual budget for the County Clerk's Office for Macdonald's consideration; that the Deputy County Clerk has done so since Macdonald has been the County Clerk; and that, after Macdonald approves the proposed budget, Wahlers then presents it to the County Board for approval.

9. That in order to carry out the responsibilities of the Deputy County Clerk position, as described in Finding of Fact No. 8, Wahlers attends meetings of the finance committee of the County Board, which are open to the public; and that at the meetings Wahlers effectively makes recommendations concerning the implementation of the new accounting system, as well as other budgetary matters for the County, and participates in discussions concerning contingency funds for subsequent labor agreements with County employees.

10. That Wahlers directs the daily activities of the Account Clerk I and Accounting Technician and assigns them tasks; that, though no vacancy has occurred in the Account Technician or Accounting Clerk positions during Wahlers' incumbency as Deputy County Clerk, she has been told by Macdonald she may recommend which applicant should be hired for a vacancy which occurs and has also been told she may recommend whether such new employee would pass from probation to permanent status; that Wahlers has authorized her two subordinates to work overtime; that Wahlers has evaluated, and will continue to make annual evaluations of the performance of said subordinates; that Wahlers reviews the evaluation with the respective employee, pointing out strong and weak points in the employee's performance; that Wahlers approves requests by her subordinates for vacation and leaving work early; that Wahlers has administered one oral warning; that although she has been told by Macdonald that she has the authority to recommend written warnings, suspensions, and discharge for said employees, she has not had occasion to do so as of the time of the hearing; and that Wahlers has not exercised sufficient supervisory responsibilities so as to justify her exclusion as a supervisor.

11. That Macdonald reviews Wahlers' performance; that Macdonald was not involved in the development or implementation of the new accounting system; that Wahlers fills in for the County Clerk and performs his duties when he is absent; and that Wahlers receives \$13,175.57 per year, while the Account Technician receives \$12,509.31 per year and the Accounting Clerk I receives \$9,686.57 per year.

12. That at the beginning of the hearing the County stated that it would not contest the inclusion of the position of Maintenance/Custodian currently occupied by Jim Kelso, in the bargaining unit set forth in Finding of Fact No. 3, and therefore, no evidence was taken regarding that position.

Upon the basis of the above and foregoing Findings of Fact, the Commission makes the following

#### CONCLUSIONS OF LAW

1. That, since the position of Deputy County Clerk is not occupied by either a supervisory, managerial, or confidential employee, the occupant of that position is a "municipal employee" within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act.

2. That Wahlers is a professional employee within the meaning of Section 111.70(1)(1) of the Municipal Employment Relations Act and that the bargaining unit description does not exclude professional employees.

3. That since the position of Maintenance/Custodian is not supervisory in nature, the occupant of said position is a municipal employee within the meaning of Section 111.70(2)(b) of the Municipal Employment Relations Act.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

ORDER CLARIFYING BARGAINING UNIT 2/

1. That the position of Deputy County Clerk in the County Clerk's office of Oneida County be, and hereby is, included in the bargaining unit described in Finding of Fact No. 3.

2. That the position of Maintenance/Custodian be, and the same hereby is, included in the bargaining unit described in Finding of Fact No. 3.

Given under our hands and seal at the City of  
Madison, Wisconsin this 8th day of July, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Gary L. Covelli  
Gary L. Covelli, Commissioner

Marshall L. Gratz  
Marshall L. Gratz, Commissioner

2/ Pursuant to Sec. 227.11(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats.

227.12 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.12, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.11. If a rehearing is requested under s. 227.12, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 182.70(6) and 182.71(5)(q). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER  
CLARIFYING BARGAINING UNIT

POSITION OF THE PARTIES

The County argues that the duties of the Deputy County Clerk position have substantially changed since September, 1982, causing the qualifications for the position to increase. The record demonstrates Wahlers holds a sufficient combination of supervisory factors to be considered a supervisor. In addition, because Wahlers makes effective recommendations to the County Board with regard to the County's budget and prepares the County Clerk Department's budget, she is also a managerial employee. Moreover, Wahlers is a confidential employee, because she advises the finance committee of the County Board of Supervisors on alternative financial positions the County may take during negotiations for successive labor contracts covering its employees. Finally, because the position now requires a four year accounting degree and because the incumbent must repeatedly exercise independent discretion and judgment, it has become a professional position.

The Union, on the other hand, maintains that any recent changes which may have occurred in Wahlers' position are insufficient to exclude it from the unit. As for the County's claim that the position has supervisory responsibilities, the position's responsibilities have not changed. Any supervisory authority possessed by Wahlers relates primarily to activities while only minimally to employees. Moreover, the Deputy County Clerk incumbent has historically received a higher wage rate than those employees she directs. With respect to the position's managerial status, the evidence shows Wahlers was not primarily responsible for the initial development of the new accounting procedures, and that she simply oversees departments to be sure they follow the new accounting guidelines. While she may develop the County Clerk Department's budget, the County Board's finance committee does not give her independence in the commitment of the budget. The Union also contends that under Chapter 59 of the Wisconsin Statutes, the County cannot delegate to the Deputy County Clerk the authority of the County Clerk it claims it has entrusted to Wahlers. Wahlers' position does not have confidential status because the information to which she is privy is all information to which the Union has access. Although Wahlers may have a bachelor's degree in accounting, her position does not now require a professional employee since Wahlers' responsibilities are similar to those held by the previous incumbents who did not have a college degree. If the County had intended to have the new accounting procedure alter the responsibilities for the position, such a change would have been reflected in the most recent job description of the position, which is not the case.

SUPERVISORY STATUS

The Commission has repeatedly considered the following factors in determining if a position is supervisory in nature:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees;
2. The authority to direct and assign the work force;
3. The number of employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees;
4. The level of pay, including an evaluation of whether the supervisor is paid for his/her skills or for his/her supervision of employees;
5. Whether the supervisor is supervising an activity or is primarily supervising employees;

6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees;

7. The amount of independent judgment exercised in the supervision of employees. 3/

The Commission has held that not all of the above factors need to be present, but if a sufficient number of these factors appear in any given case, the Commission will find an employee to be a supervisor. 4/ Wahlers was told she would have the authority both to recommend discipline, including written warnings, suspensions or discharge, for the employees she directs, and, to recommend who might fill vacancies or go off probation in those positions. However, as of the date of the hearing, except for one oral warning, she has never exercised such authority. The Commission is not persuaded that Wahlers alleged potential authority is sufficient basis to establish supervisory status. In fact, the record shows she primarily has directed the activities of those employees. Moreover, the August 1982 job description for her position does not delineate any of the duties and authorities typical of a supervisor. While such description would be amended if it were to be updated, the only indicated change would relate to the future incumbent having a four year accounting degree. It is also notable that the County Clerk's Office has only five employees, including Macdonald, and that he has the effective authority to supervise the four employees subordinate to him, and under such circumstances clearly any supervisory authority that could also be attributed to Wahlers is de minimus. Accordingly, the Commission finds that a sufficient number of those factors demonstrating supervisory status are not present in this matter so as to cause Wahlers to be excluded from the bargaining unit as a supervisor.

#### MANAGERIAL STATUS

The Commission has determined that managerial status is related to an employee's participation in the formulation, determination, and implementation of management policy and the effective authority to commit the employer's resources. 5/ Though Wahlers supplies her expertise to the finance committee of the County Board of Supervisors with regard to accounting and budgetary matters and to the various departments throughout the County with regard to adherence to the new accounting method, it is in an advisory capacity, rather than a managerial decision-making posture. And while she does exercise managerial discretion when she prepares the budget for the County Clerk's Office, standing alone such a function does not confer managerial status. 6/ It is also important to note that Macdonald must first approve the budget before Wahlers presents it to the County Board. 7/ Accordingly, Wahlers is not a managerial employee.

#### CONFIDENTIAL STATUS

The County further maintains the position is confidential in nature. The Commission has consistently held that in order for an employee to be considered a confidential employee, and thereby excluded from the bargaining unit, such an

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3/ Dodge County (Clearview Home), (11469-A), 3/83.

4/ Ibid.

5/ Village of Brown Deer (Dept. of Public Safety), (19342), 1/82.

6/ Cf. Shawano County, (12310), 12/73, wherein the Commission stated:

"While the drawing-up of a budget draft involves a certain exercise of managerial discretion, much of such budget preparation appears to be routine, and in no case do Deputies make final decisions as to Departmental budgetary needs and allocations."

7/ There has also been no demonstration that the County delegated the County Clerk's lawful authority to Wahlers so as to contravene Chapter 59 of the Wisconsin Statutes.

employee must have access to, have knowledge of, or participate in confidential matters relating to labor relations. 8/ In order for information to be confidential for such a purpose, it must be the type of information that: (1) deals with the Employer strategy or position in collective bargaining, contract administration, litigation, or other similar matters pertaining to labor relations between a bargaining representative and the Employer; and (2) is not available to the bargaining representative or its agents. Though Wahlers gives recommendations to the finance committee of the County's Board of Supervisors with regard to funds available for proposals in successive labor contracts, those sessions are open to the public and the Union has access to such information; therefore, the position is not confidential in nature.

#### PROFESSIONAL STATUS

Finally, the County maintains that Wahlers holds a professional position. Sec. 111.70(1)(1) of MERA defines a "professional" employee as:

1. Any employee engaged in work:
  - a. Predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work;
  - b. Involving the consistent exercise of discretion and judgment in its performance;
  - c. Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time;
  - d. Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical process; or
2. Any employee who:
  - a. Has completed the courses of specialized intellectual instruction and study described in subd. 1. d;
  - b. Is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in subd. 1.

. . .

Because of the development and implementation of the new GAAP accounting system, Wahlers must now assist all of the County's departments in following GAAP procedures and must attend finance committee meetings of the County's Board of Supervisors to lend her expertise as the key accounting employee for the County. Though the August, 1982 job description did not require an applicant with a four year accounting degree, the record is clear that because of the new accounting system, the County plans to require any future incumbents to have such a qualification. Moreover, the varied nature of duties, the regular exercising of judgment and discretion, the non-standardized output, the skills and knowledge necessary to perform the problem-solving duties of the Deputy County Clerk's

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8/ Sheboygan County Handicapped Children's Education Board, (20217) 1/83.



position, and the required training at an institution of higher education are sufficient to convince the Commission that said position is professional in nature. However, the Commission does not find that the instant unit clarification petition -- addressing as it does the status of only one of possibly several potentially professional positions in the unit -- to be a proper proceeding in which to determine the broader question of the appropriateness of professional with non-professional employees.

Dated at Madison, Wisconsin this 8th day of July, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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